

REMARKS

This is a Second Preliminary Amendment to the application. The first Preliminary Amendment was filed on March 15, 2004, together with the application.

Applicants have amended claims 1 and 2 to delete the reference to sedimentation velocity and to change the upper limit of zinc from "13% by weight" to "0.568% by weight." Support for this amendment is provided in the specification at least, for example, in Table 4, bridging pages 29-30. (See, e.g., last two rows of column 1 ("Zn content") at page 30.) Accordingly, no new matter is added by this amendment.

The present application is a continuation of U.S. Application No. 09/984,947, filed October 31, 2001. The Examiner finally rejected the claims in that application under 35 U.S.C. §§ 102 and 103 based on Otsuka *et al.*, *J. Biomed. Mater. Res.* (2000) 52:819-824 ("Otsuka 2000"), and Otsuka *et al.*, *Bioceramics*, Vol. 12, from Proceedings of the 12th International Symposium on Ceramics in Medicine, Nara, Japan, October 1999, eds. H. Ohgushi *et al.*, pp. 571-574 ("Otsuka 1999"), in the Office Action mailed September 24, 2003. Without acquiescing to that rejection and solely to expedite prosecution of the present application, Applicants have amended claims 1 and 2 to change the upper limit of zinc from "13% by weight" to "0.568% by weight." Otsuka 1999 and Otsuka 2000 do not teach or suggest ". . . a microparticle of zinc-containing calcium phosphate comprising from 0.6 ppm to 0.568% by weight . . .".

If this amendment does not place the application in condition for allowance, Applicants invite the Examiner to contact the undersigned at (650) 849-6778.

Please grant any extensions of time required to enter this response and charge
any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 29, 2004

By: Danielle Pasqualone
Danielle M. Pasqualone
Reg. No. 43,847
Customer No. 22,852O